

**AMERICAN ARBITRATION ASSOCIATION**

***In the Matter of Arbitration Between:***

**FRATERNAL ORDER OF POLICE  
LODGE #5**

**and**

**CITY OF PHILADELPHIA**

**AAA Case #01-14-0000-9175  
(Gr: Sgt. Young-Bachmeyer  
Discipline)**

**Walt De Treux, Esq., Arbitrator**

*Hearing Date: 12/7/15*

*Transcript Received: 1/12/16*

*Decision Date: 2/11/16*

**Appearances:** For the FOP – Marc L. Gelman, Esq., *JENNINGS SIGMOND*  
For the City – Christopher Rider, Esq., *CITY OF PHILA. LAW DEPT.*

**Introduction and Statement of Relevant Facts**

In late spring and summer of 2013, Grievant Donna Jean Young-Bachmeyer was serving as a Sergeant in the Philadelphia Police Department East Detective Unit. In late March 2013, an anonymous letter addressed to then-Commissioner Charles Ramsey asserted that Sgt. Young-Bachmeyer “continue[s] to work 4 days a week and always get paid for 5 days a week, leave for hours at a time...and be on Vacation when being carried on the DAR.” The letter writer also accused the sergeants in East Detectives of “covering for one another, split shifts, and being carried for Weddings, daycare, ballgames, attending while on duty.” The letter was referred to the Internal Affairs Division (IAD) for investigation. Sgt. Chester O’Neill was assigned to conduct the investigation.

IAD conducted surveillance of the Grievant on 26 days between May 20, 2013 and August 15, 2013. Surveillance confirmed that on 15 of the 26 days, Sgt. Young-

Bachmeyer either arrived to work late or left early while completing Daily Attendance Reports (DARs) that indicated she was working. The Department determined that the Grievant had been paid for 33.5 hours that she had not worked.<sup>1</sup>

Commissioner Ramsay took direct action, citing the Grievant for Neglect of Duty (Section 5-§001-10 of the Department's Disciplinary Code). The Commissioner issued an official reprimand, ordered restitution in an amount equal to 33.5 hours (\$1,266.58), and transferred Sgt. Young-Bachmeyer to the 35<sup>th</sup> Police District. The City deducted the restitution from the Grievant's paycheck in \$300 installments until paid in full.

Sgt. Young-Bachmeyer grieved the discipline. The parties were unable to resolve the grievance through the contractual steps, and the matter was referred to arbitration. On December 7, 2015, a hearing was held at the Philadelphia, Pennsylvania offices of the American Arbitration Association, during which time both parties had a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions. The parties closed their presentations with oral argument, and the matter was submitted to the Arbitrator for a decision.

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<sup>1</sup> The initial investigation focused on Sgt. Young-Bachmeyer. It expanded to include other Sergeants and a Lieutenant. All received discipline.

### **Issue**

The parties stipulated to the following issue,

*Did the City have just cause to discipline Grievant Donna Jean Young-Bachmeyer? If not, what shall be the remedy?*

### **Analysis and Decision**

In her investigatory interview and at the arbitration hearing, Sgt. Young-Bachmeyer, with the Department for 24 years and assigned to East Detectives since December 2006, effectively admitted to arriving to work late and leaving work early on numerous occasions. (She could not recall specific times and dates.)

The Grievant explained that she worked rotating 8a-4p and 4p-12a shifts, while sometimes being assigned to work 6a-2p or 2p-10p. In mid-2013, she was recovering from [REDACTED] and divorcing from her husband. She also had primary responsibility for the care of her [REDACTED] daughter. She dropped her daughter off at school at 7:25 am before heading to work, often causing her to be 20-30 minutes late. She admitted to sometimes reporting more than an hour after the start of the shift. She also left early on occasion when the afternoon shift Sergeant would arrive early for work and her work was already complete. She also would report late or leave early on days following times that she had stayed past the end of her shift. She asserted that the Administrative Lieutenant discouraged the Sergeants from claiming overtime. To avoid "getting yelled at," she opted not to claim overtime; but rather, to curtail her hours later the next day or later in the week. The other Sergeants and the Lieutenant engaged in similar conduct. The

Sergeants and the Lieutenant all received official reprimands, were ordered to pay restitution, and transferred.

Sgt. Young-Bachmeyer admitted to the charges against her, and she offered reasons for arriving late or leaving early. The Union argues that because of the restriction on overtime, the culture created in the Unit was “flexible” to compensate the supervisors for working past the end of their shifts without compensation. It also contends that the Grievant did not abandon her post, only leaving early when all her work was complete. The Union also notes that Grievant’s immediate supervisor – the Lieutenant – allowed the situation to occur.

But as Commissioner Ramsey explained, the Department requires its officers to use sick leave, compensatory time, or other paid time off to cover situations in which they work less than a full shift. Sgt. Young-Bachmeyer, her fellow Sergeants, and the Lieutenant, responsible for tracking the hours of subordinate detectives, bypassed the Department requirements for their own benefit. The Commissioner explained that the Detective Unit, a desirable and sought after assignment, requires strong supervision because of the nature of the Unit’s hours and assignments. He maintained that Sgt. Young-Bachmeyer and other supervisory personnel were monitoring subordinates to make sure their hours are properly tracked, while not properly tracking their own hours. Commissioner Ramsey emphasized that he issued the lowest form of discipline – a reprimand – after considering the Grievant’s otherwise discipline-free record. After also considering demotion, he opted for transfer, citing his loss of confidence in her ability to supervise detectives and in an effort to put her under greater supervision.

Grievant cannot assign her shortcomings to the Lieutenant's failure to supervise. As a supervisor herself, she was complicit in ignoring and bypassing the Department's policies and requirements on recording and tracking time worked and paid time off. The fact that other supervisory personnel engaged in the misconduct does not absolve the Grievant from discipline. As noted, reprimand is the lowest level of discipline and is appropriate in this situation considering Grievant's long record of service without prior discipline. The transfer is also an appropriate penalty for the reasons cited by the Commissioner – a breach of trust caused by Sgt. Young-Bachmeyer and other supervisors engaging in conduct that they are empowered to enforce against their subordinates, the resulting loss of confidence in Grievant's supervisory ability in a detective unit, and the need to ensure greater supervision of the Grievant.

For these reasons, I find that the Department had just cause to reprimand and transfer Sgt. Young-Bachmeyer.

The Union takes more precise aim at the restitution ordered by the Commissioner. The restitution was calculated using the hours the Grievant arrived late or left early as determined by the surveillance unit. After the Commissioner issued the discipline, restitution was taken directly from Sgt. Young-Bachmeyer's paycheck in \$300 installments until paid in full. Neither the Grievant nor the Union were provided with a copy of the surveillance report; and Sgt. O'Neill admittedly rounded up or down the number of hours. The Union asserts that the Grievant is unable to respond to the particular late arrivals/early quits without reviewing the

documentation; and it contends that due process issues are implicated when money is taken from the Grievant's paycheck without notice and an opportunity to be heard.

In April 2012, the parties had a dispute regarding the final compensation payout due former Officer Ronald Scott. The City had deducted from Officer Scott's terminal pay an amount equal to 11 sick leave days that the City determined were taken improperly. The FOP contended that the City cannot unilaterally deduct monies owed by an officer from his paycheck absent due process (notice and an opportunity to be heard), except in very limited circumstances<sup>2</sup>. The City countered that once it establishes an officer's debt to the City, it has the right to recoup the amount owed by deducting it from the officer's paycheck. The City further asserted that the collective bargaining agreement does not prohibit the deduction, and it notes that the City has a long standing past practice of making such deductions. The City maintains that an arbitration hearing is an officer's opportunity to be heard.

In a May 2, 2013 Arbitration Award, Arbitrator David J. Reilly sustained the grievance. Arbitrator Reilly described the parties' practice regarding recoupment of monies owed through paycheck deduction as follows,

"It [the past practice] permits the City to make such deductions only where it has provided the employee advance notice of its intention to do so, and the amount of the employee's debt to the City is a sum certain as to which there is at least tacit agreement."

Accordingly, the past practice, as described in the Scott Award, allows the City to deduct monies owed by an officer from the officer's paycheck when the

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<sup>2</sup> The FOP acknowledged that the City has a right to recoup the monies owed through methods other than unilateral payroll deduction.

officer is given advance notice and the parties have “at least tacit agreement” to the amount owed.

In the present case, the record is not clear as to whether Sgt. Young-Bachmeyer had advance notice that the ordered restitution would be deducted from her paycheck in equal installments until paid in full. For purposes of this Decision and Award, I will assume *arguendo* that she did receive advance notice of the deduction because the real issue is the absence of agreement, tacit or otherwise, over the amount owed.

Sgt. O'Neill calculated the amount owed by tallying up (and rounding off) the hours reported by the surveillance unit as the times Sgt. Young-Bachmeyer arrived late or left early. Sgt. Young-Bachmeyer admitted generally to arriving late or leaving early as a matter of practice. She had no specific recall of the dates on which the surveillance team observed her. She was not permitted to see the surveillance report nor was she given any detail on the surveillance unit observations. During the investigatory interview, she was given the date and the allegation and asked to respond. A typical exchange was as follows,

“Q. On 6-17-13 what was your tour of duty?

A. From looking at the DAR I am 8 X 4.

Q. On 6-17-13 you were 1.5 hours late without using any type of time/leave to cover your absence. Can you explain why no time was taken?

A. ...I don't recall that specific date but some mornings I am late because of that.”

[referring to general reasons she may be late or leave early on any particular day.]

The FOP does not receive the surveillance report as part of the grievance process, and the report was not introduced into evidence at the arbitration hearing. In short, there is no verification by the FOP, or any independent verification, of the restitution calculation.

Lieutenant E [REDACTED] R [REDACTED], Administrative Lieutenant responsible for the surveillance unit, testified that the surveillance reports are confidential. He did not explain why, but the FOP did not challenge the confidentiality claim. Nothing in this Decision and Award is intended to pierce that confidentiality. But the confidentiality of the surveillance report and resulting lack of specific detail in the investigation report as it relates to the restitution calculation precludes any “tacit agreement” by the parties as to the amount owed. Absent “at least tacit agreement” as to “a sum certain,” the parties’ past practice does not permit unilateral deduction from the Grievant’s paycheck<sup>3</sup>.

Based on the lack of verification and “tacit agreement” on the amount owed by Sgt. Young-Bachmeyer, I find that the City did not have just cause to order restitution as part of its disciplinary penalty.

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<sup>3</sup> Had there been FOP or independent verification of the hours Sgt. Young-Bachmeyer arrived late or left early, the FOP could have still challenged the propriety of ordering restitution; but there would have been “at least tacit agreement” on the number of hours and the amount of restitution at issue.



### **Award and Remedy**

The grievance is denied in part and sustained in part. The City had just cause to reprimand and transfer Sgt. Donna Jean Young-Bachmeyer. It did not have just cause to order restitution. As remedy, the City is directed to reimburse the Grievant for the full amount of restitution paid by her.

The Arbitrator shall retain jurisdiction for the sole purpose of resolving any disputes over the implementation of the remedy.



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